

June 17, 2003

SDEC Informal Advice Letter No. IA03-05

C. April Boling, CPA
7185 Navajo Road, Suite L
San Diego, CA 92119

Re: Request for Informal Advice Regarding Acceptance of Contributions from
Sole Proprietorships

Dear Ms. Boling:

This advice letter has been prepared in response to your letter to the City of San Diego Ethics Commission dated May 31, 2003. You are seeking advice from the Ethics Commission interpreting the requirements and prohibitions of the City's Election Campaign Control Ordinance [ECCO] which is contained in the San Diego Municipal Code [SDMC]. Your letter asks general, hypothetical questions, and accordingly we consider your letter to be a request for informal advice. The subject of your inquiry relates to the question of whether it is permissible to accept a campaign contribution from a sole proprietorship. Your letter includes a series of hypothetical examples. Our interpretation of ECCO on this point and the application of ECCO to your hypothetical examples are set forth in this opinion.

ANALYSIS OF ECCO

ECCO contains the following explicit prohibition on contributions from organizations:

It is unlawful for a *candidate, committee, committee treasurer* or other *person* acting on behalf of a *candidate* or *committee* to accept a *contribution* from any *person* other than an individual.

SDMC § 27.2947(a). Moreover, "person" is defined in the ordinance as follows:

"*Person*" means any individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, association, *committee*, labor union, or any other organization or group of *persons* acting in concert.

SDMC § 27.2903. This definition clearly expresses the legislative intent behind the ban on organizational contributions: to prohibit the acceptance of contributions from any possible type of business structure, including a "proprietorship." Although you are correct in pointing out that a sole proprietorship consists only of one individual, it is one individual "doing business as" a business entity. (As you know, a sole proprietorship is commonly referred to as a "DBA.") Therefore, ECCO prohibits a committee (other than

a ballot measure committee) from accepting a contribution from an individual if it is in the form of a business check from the individual's sole proprietorship.

You question whether the owner of a sole proprietorship is prohibited from participating in City elections if the owner does not have a personal checking account. The answer is no, the contributor is not prohibited from participating. Pursuant to Government Code section 84300 and rules adopted by the Fair Political Practices Commission, a contributor may make a contribution of less than \$100 in the form of cash, a money order, or a cashier's check. In addition, the contributor may open up a personal checking account and make a contribution from that account. ECCO does not restrict the right of an individual to make a contribution; however, it would contradict the legislative intent of ECCO to permit a sole proprietorship to make a political contribution as a business expense.

APPLICATION OF ECCO TO HYPOTHETICALS

In your letter, you mention several hypothetical contributors and ask whether contributions from each would be banned by ECCO. In light of the analysis set forth above, a committee would be prohibited from accepting contributions from all of the following hypothetical contributors:

John Jones & Associates

Jones & Associates

John Jones DBA San Carlos Diner

John Jones Diner

San Carlos Diner

John Jones, San Carlos Diner

Each of the foregoing names on a contribution check would clearly indicate that the contributor is a business entity, and that therefore the acceptance of such a contribution is impermissible. The same is not true, however, with a check from "John Jones." In this instance, there would be no indication to the recipient that the contributor is a business entity. ECCO does not require a committee or committee treasurer to independently verify that a contribution check drawn on an account in the name of an individual is truly from an individual, and is not actually a business checking account for a sole proprietorship (or other type of business entity). However, if there is some indication on the check (i.e., a tax identification number) suggesting that it is drawn against a business account, it would be incumbent on the committee or committee treasurer to ensure that the contribution is from an individual.

I hope this letter sufficiently answers your questions. If you require additional assistance, please contact our office.

Sincerely,

Charles B. Walker
Executive Director